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March 18, 2009

Legislative Office Building
Judiciary Committee Room 2500
300 Capitol Avenue
Hartford, CT 06106

Re: Claim of Eileen Lindholm
Subject: Public Hearing – H.J. No. 72 (COMM) Resolution Confirming the Decision of the Claims Commissioner to Deny the Claim Against the State of Eileen Lindholm

Dear Sir/Madam:

Please find the enclosed documents in connection with the above hearing scheduled for Friday, March 20, 2009 at 10:00 AM. Enclosed you will find the following documents for your review and consideration at the hearing:

1. Motion for Articulation dated January 9, 2009;
2. Findings of Fact and Law dated December 15, 2008; and
3. Pre-Disposition Memorandum dated November 17, 2008.

Please contact our office with any questions relative to this matter. Thank you.

Very truly yours,

Monique S. Foley
Attorney at Law

MSF/kas
Enclosures

CLAIM NO. 21041

EILEEN LINDHOLM *Claimant*	:	STATE OF CONNECTICUT
V.	:	CLAIMS COMMISSIONER OFFICE
STATE OF CONNECTICUT, UNIVERSITY OF CONNECTICUT HEALTH CENTER, AND JOHN DEMPSEY HOSPITAL *Respondent*	:	999 ASYLUM AVENUE HARTFORD, CT 06105 NOVEMBER 17, 2008

CLAIMANT'S PRE-DISPOSITION MEMORANDUM

I. CLAIMANT'S ALLEGATIONS / CONTENTIONS

A. ALLEGATIONS

1. On January 3, 2007 and at all times relevant to the instant claim, the Defendant, University of Connecticut Health Center, comprising of the Defendant, John Dempsey Hospital, was a state organization organized and existing under the laws of the State of Connecticut who were responsible to maintain in a safe condition all public sidewalks, roadways and driveways included within said organization.

2. On January 3, 2007, at approximately 10:00 a.m., the claimant, Eileen Lindholm, while leaving the defendant hospital, John Dempsey Hospital and University of Connecticut Health Center, was walking across the driveway of the front entrance to

said hospital, when suddenly and without warning her foot became caught on a pothole in said driveway causing the claimant to fall and sustain the injuries, losses and damages hereinafter set forth.

3. The sole and proximate cause of the fall and the claimant's injuries, losses and damages was the defective and dangerous condition of said driveway at the aforementioned location and the failure of the respondent and/or its employees and/or agents to keep said driveway safe for public use/travel. Said neglect and breach by the respondents, State of Connecticut, University of Connecticut Health Center and/or John Dempsey Hospital of its statutory duty were the cause of the claimant's injuries, losses and damages in one or more of the following ways, in that it/they:

   a. failed to make a reasonable and proper inspection of the subject driveway on a regular basis;

   b. permitted the unpaved sections of the subject driveway to become and/or remain in an uneven and/or abnormal state/condition;

   c. failed to repair the pothole existing in said driveway;

   d. failed to have policies and procedures in place that required inspection and repair of the subject driveway;

e. failed to warn the claimant and others lawfully on the driveway of the uneven surfaces of the aforesaid driveway;

f. failed to display warning signs cautioning the claimant of the dangerous and/or treacherous conditions then and there existing on the driveway;

g. failed to keep said area reasonably safe or to guard the claimant or others lawfully on the driveway from falling by failing to place ropes, cones or other physical barriers around the defects including potholes existing on said driveway; and

h. failed to direct the claimant around the pothole on said driveway.

4. As a result of the Defendant's statutory breach and neglect, as aforesaid, the claimant, Eileen Lindholm, sustained injuries to the following:

a. Right knee;

b. Left foot; and

c. Left ankle;

5. All of the said injuries have caused the claimant severe pain and suffering and some or all of said injuries, or effects thereof, may be permanent and lasting in nature.

6. As a further result of the respondent's, State of Connecticut, University of Connecticut Health Center and John Dempsey Hospital statutory breach and neglect, as aforesaid,

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the claimant, Eileen Lindholm, was compelled to expend and will be obligated in the future to continue to expend large sums of money for hospital and medical care, x-rays, therapies, medications, apparatus and the like, in an effort to cure herself.

7. As a further result of the respondent's, State of Connecticut, University of Connecticut Health Center and John Dempsey Hospital statutory breach and neglect, as aforesaid, the claimant's, Eileen Lindholm, ability to pursue and enjoy life's activities has been reduced and/or impaired all to her detriment.

8. As a further result of the claimant's, State of Connecticut, University of Connecticut Health Center and John Dempsey Hospital statutory breach and neglect, as aforesaid, the claimant, Eileen Lindholm, lost time from her employment and her earning capacity has been greatly diminished, impaired and reduced, all to her loss and damage.

B. RELIEF REQUESTED

1. The Claimant's demand to resolve this matter prior to commencing suit is $45,000.00.

2. In the alternative, Claimant respectfully requests permission from the Office of the Claims Commissioner, pursuant to Conn, Gen Stat. 4-147, to sue the State of Connecticut.

3. The Claimant also respectfully requests attorney's fees in the amount of $5,000.00.

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II. DEFENDANT'S ALLEGATIONS / CONTENTIONS

1. The Respondents have denied liability for this claim based on their assertion that an "UCHC investigation revealed that claimant did not exercise proper caution and contributed to the fall." To date, respondents have failed to provide any information regarding the nature, extent and results of this investigation. Nor have the respondents provided any witness statements, video or expert testimony in this regard. It is apparent that the respondent's denial of liability and damages is not done in good faith or with any reasonable basis. The UCHC's own incident report indicates that the claimant fell on state property and that she fell in the area of a "defect" in the roadway consisting of an "extended crack that encompassed a pothole measuring 2 feet long, 18 inches wide and 2 inches deep".

2. In addition to the foregoing, respondents deny that claimant suffered any injury. The respondents have not provided and claimant is unaware of any report, investigation or specific finding in support of this claim.

III. LEGAL ISSUES

1. Liability

2. Damages

IV. CLAIMANT'S WITNESSES

1. Eileen Lindholm (Claimant) 133 Huntington Street, Hartford, Connecticut 06105. It

is expected that Ms. Lindholm will testify to the circumstances surrounding her fall, including the nature and extent of her injuries sustained thereof. Ms. Lindholm can also be expected to testify to the treatment received and the effects on daily life in connection with her injuries.

2. Mark Tebbets (Expert) New England Code Consulting, 14 Sunrise Avenue, Pawcatuck, CT. It is expected that Mr. Tebbets will furnish testimony consistent with claimant's disclosure of expert and his report dated September 7, 2008 as well as any reports he may render up to the time of the hearing. Specifically, Mr. Tebbets is expected to testify that the driveway where claimant fell was not maintained in a safe or proper manner thereby creating a dangerous condition which the claimant could not avoid. He is expected to testify that it was reasonable for the claimant to use the path of travel followed on the date of her fall and that the condition of the pothole was the sole contributing cause for Plaintiff's fall. He is further expected to testify that the pothole which caused the claimant's fall was not in compliance with one or more State Building Codes and ADA regulations.

V. EXHIBITS

C (1) University of Connecticut Health Center Incident Report;

C (2) Curriculum Vitae and Expert Report, 9/7/08 from Mark Tebbets, MCP

C (3) Photographs of the site of fall;

C (4) Photographs of claimant's injuries;

C (5) Medical records:

a. UCONN/ John Dempsey Hospital emergency room records;

b. UCONN Health Center (Dr. Berkowitz) records; and

c. Mount Sinai Rehabilitation Hospital records

C (6) Medical bills

C (7) Medical bills summary

C (8) Lost Wage information – Sunrise Assisted Living

C (9) Lien Information

C (10) Life expectancy table

V. ANTICIPATED EVIDENTIARY PROBLEMS

Claimant does not anticipate any evidentiary problems at this time, but reserves the right to amend this answer based on respondent's pre-disposition memorandum

VI. FURTHER PREDISPOSITION PROCEEDING

Claimant does not anticipate the need for any further discovery at this time, but reserves the right to amend this answer based on respondent's pre-disposition memorandum

VII. TIME REQUIRED FOR DISPOSITION

Claimant anticipates approximately two hours for time presentation of her part of the proceedings.

THE CLAIMANT
EILEEN LINDHOLM

BY _____
Monique S. Foley, Esq.
Her Attorney
Law Offices of Kevin C. Ferry, LLC
77 Lexington Street
New Britain, CT 06052
(860) 247-0030
Juris No: 404591

CERTIFICATION

This shall certify that a copy of the foregoing has been delivered by first class mail postage prepaid this 17th day of November, 2008 to:

JAMES R. SMITH COMMISSIONER
STATE OF CONNECTICUT
Office of Claims Commissioner
999 Asylum Avenue
Hartford, CT 06105
Telephone (860) 566-2024 Facsimile (860) 566-3406

And
Attorney General's Office
Donald R. Green, Esq.
Assistant Attorney General
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120

_____
Monique S. Foley, Esq.

CLAIM NO. 21041

EILEEN LINDHOLM *Claimant*	:	STATE OF CONNECTICUT
V.	:	CLAIMS COMMISSIONER OFFICE
STATE OF CONNECTICUT, UNIVERSITY OF CONNECTICUT HEALTH CENTER, AND JOHN DEMPSEY HOSPITAL *Respondent*		999 ASYLUM AVENUE HARTFORD, CT 06105
	:	DECEMBER 15, 2008

CLAIMANT'S FINDINGS OF FACT AND LAW

I. FACTUAL FINDINGS

The following facts can reasonably be found from testimony and evidence presented at the liability hearing held on December 5, 2008:

1. On January 3, 2007, at approximately 10:00 a.m., the claimant, Eileen Lindholm, while leaving the respondent hospital, John Dempsey Hospital and University of Connecticut Health Center, was walking across the driveway of the front entrance to said hospital, when suddenly and without warning her foot became caught on a pothole in said driveway causing the claimant to fall and sustain injuries, losses and damages. (Testimony of Eileen Lindholm)

2. The claimant while watching which direction she was traveling just prior to her

fall, was unaware of the existence of the pothole until she came into contact with the aforesaid pothole. (Testimony of Eileen Lindholm)

3. That the pothole was not readily discoverable by all (Testimony of Mr. Elliot)

4. The date in question was the claimant's first time at the respondent hospital. (Testimony of Eileen Lindholm)

5. The claimant was wearing glasses and rubber soled shoes at the time of the fall. (Testimony of Eileen Lindholm)

6. The area where Plaintiff was walking was an area designated for drop off and pickup and therefore reasonably anticipated to be accessed by patrons entering and exiting the hospital. (Testimony of Eileen Lindholm and Jeffrey Lowd; Expert Report from Daniel Tierney, Deputy State Building Inspector dated November 26, 2008 - "it appears that the area in question where the incident happened was **clearly designated for vehicular use and drop-off** area..." *emphasis added*

7. The area surrounding the entrance to the aforesaid hospital was an area commonly congested with vehicles thereby preventing patrons, the claimant in particular, from viewing the entrance or sidewalk to the respondent hospital. Claimant testified that on the day in question the entranceway was covered with buses, vans and/or other vehicles thereby obstructing the entrance to the hospital. (Testimony of Mr. Elliot and Eileen Lindholm)

8. The roadway upon which claimant was walking was an area known to contain multiple vehicles at one time, thereby preventing and/or inhibiting direct access to the front entrance of the hospital. (Testimony of Thomas Elliott, Director of University of Connecticut Health Center's Facilities Management)

9. The roadway upon which claimant was walking was an area in which patrons were known to walk. (Testimony of Officer Jeffrey Lowd, B & G Patrol Officer).

10. There were no signs, warnings or other indications existing at the time of claimant's fall which prohibited patrons, the claimant in particular, from using the driveway to access the entrance or parking lot of said hospital. (Testimony of Jeffrey Lowd).

11. There was no one directing or instructing patrons, the claimant in particular to use the sidewalk in lieu of the driveway to access the entrance or parking lot of said hospital (Testimony of Jeffrey Lowd).

12. The pothole in which claimant fell was characterized as a defect by Jeffrey Lowd. (Report and Testimony of Jeffrey Lowd)

13. The buildings and ground personnel were required to do routine checks of the premises, the roadway in particular, and to correct any problems, defects or other matters discovered during said checks. (Testimony of Thomas Elliot)

14. One of the defects which the buildings and ground personnel were responsible

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to check and ultimately repair was potholes. (Testimony of Thomas Elliot)

15. That the checks occurred approximately 7:00 every day. That claimant's fall did not occur until 10:00a.m. (Testimony of Thomas Elliot and Eileen Lindholm)

16. That upon the claimant's return to the respondent hospital later that same day, the pothole had been filled. (Testimony of Eileen Lindholm).

II. LEGAL FINDINGS

The respondent is liable to the Claimant in negligence. "The essential elements of a cause of action in negligence are well established: duty; breach of that duty; causation; and actual injury." (Internal quotation marks omitted.) *Considine* v. *Waterbury,* 279 Conn. 830, 858, 905 A.2d 70 (2006). "A duty to use care may arise from a contract, from a statute, or from circumstances under which a reasonable person, knowing what he knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result from his act or failure to act." (Internal quotation marks omitted.) *Pelletier v. Sordoni/Skanska Construction Co.*, 286 Conn. 563, 945 A.2d 388 (2008). Evidence of duty in this case is most clearly established by the last of these factors. The respondents were under a duty to inspect and maintain the premises in a safe and accessible manner for all business invitees. *Morin v. Bell Court Condominium Assoc., Inc.*, 223 Conn. 3232, 327 (1992). The respondents testified

that they were required to check for defects existing on the premises, potholes in particular. The respondents further testified that they were required to do daily checks at or around seven o'clock in the morning and then repair said defects. The respondents breached this duty when despite its actual knowledge or reasonable ability to know of the existence of this condition failed to repair same. The respondent's contention that the roadway existing at the time of claimant's fall was fine in its current state is without merit because there would have been no reason to repair the pothole if they reasonably believed that this condition was acceptable at the time they did their check of the driveway that morning.

The respondents can also be found to be the sole and proximate cause of the claimant's fall and injuries. To establish the element of causation,

> "a plaintiff must establish that the defendant's conduct legally caused the injuries, that is, that the conduct both caused the injury in fact and proximately caused the injury. . . The test for cause in fact is, simply, would the injury have occurred were it not for the actor's conduct. . . . The test of proximate cause is whether the defendant's conduct is a substantial factor in producing the plaintiff's injury. The substantial factor test asks . . . whether the harm which occurred was of the same general nature as the foreseeable risk created by the defendant's negligence." (Citations omitted; internal quotation marks omitted.) *Craig v. Driscoll*, 262 Conn. 312, 330-31, 813 A.2d 1003 (2003).

The defective and dangerous condition of said driveway at the aforementioned location and the failure of the respondent and/or its employees and/or agents to keep said driveway safe for public use/travel was the only contributing factor to claimant's fall and resultant injuries. Evidence of the defect is established by claimant's expert report, the respondent's requirements to fix defects on the property, potholes in particular and the investigating officer's report characterizing the pothole as a defect. The respondents noticed or reasonably could have noticed the existence of the pothole during its daily morning inspection. As previously stated, they were mandated to look for and repair the very defects which claimant encountered. The pothole can also be reasonably be found to be a condition that does not arise overnight, but rather gradually occurring over time, thereby affording the respondent's ample opportunity to discover and repair this condition. Claimant respectfully requests judicial notice to this effect. In the alternative, claimant submits that respondent's contention that the pothole could have arisen that day, despite any training, experience or knowledge to this fact, does not carry as much credence as claimant expert, Mark Tebbetts, a party more qualified to testify to the existence and condition of the pothole.

The claimant can also reasonably be found to free from contributory negligence. The claimant was looking where she was heading prior to the fall and was unaware of the existence of the pothole prior to encountering same. The claimant had never been to the

respondent hospital before, thereby negating any knowledge of the existence of the sidewalk. In addition, the sidewalk was blocked by several vehicles surrounding same. More importantly, the claimant was lawfully walking on the driveway at the time of her fall. There were no signs, instructions or other indications prohibiting her from walking on the roadway or using same to access the parking lot. Finally, there is no evidence that claimant's shoes or purse in any way contributed to her fall. The circumstances surrounding this case can be found to be factually similar to *Wells v. State*, No. CV-04-0830623 (CT 3/14/2005) attached hereto and made a part hereof.

Based on the foregoing, the neglect and breach by the respondents, is established by one or more of the following ways:

a. that they failed to make a reasonable and proper inspection of the subject driveway;

b. that they permitted the unpaved sections of the subject driveway to become and/or remain in an uneven and/or abnormal state/condition;

c. that they failed to repair the pothole existing in said driveway;

d. that they failed to have policies and procedures in place that required timely inspection and repair of the subject driveway;

e. that they failed to warn the claimant and others lawfully on the driveway of the uneven surfaces of the aforesaid driveway;

f. that they failed to display warning signs cautioning the claimant of the dangerous and/or treacherous conditions then and there existing on the driveway;

g. that they failed to keep said area reasonably safe or to guard the claimant or others lawfully on the driveway from falling by failing to place ropes, cones or other physical barriers around the defects including potholes existing on said driveway; and

h. that they failed to direct the claimant around the pothole on said driveway.

Actual injury in this matter is established by the claimant's injuries to her right knee, left foot; and left ankle. Claimant's injuries are established and supported by the pain and suffering she testified as enduring subsequent to the fall, the medical treatment sought and expenses incurred in connection with same and the records documenting the injury.

Based on the foregoing, claimant believes there is evidence to find that the respondent is liable to the claimant for injuries sustained on January 3, 2007. Claimant's demand to resolve this matter prior to commencing suit is $45,000.00. In the alternative, Claimant respectfully requests permission from the Office of the Claims Commissioner, pursuant to

Conn, Gen Stat. 4-147, to sue the State of Connecticut. The Claimant also respectfully requests attorney's fees in the amount of $5,000.00.

THE CLAIMANT
EILEEN LINDHOLM

BY _____
Monique S. Foley, Esq.
Her Attorney
Law Offices of Kevin C. Ferry, LLC
77 Lexington Street
New Britain, CT 06052
(860) 247-0030
Juris No: 404591

CERTIFICATION

This shall certify that a copy of the foregoing has been delivered by fax and first class mail postage prepaid this 15th day of December, 2008 to:

JAMES R. SMITH COMMISSIONER
STATE OF CONNECTICUT
Office of Claims Commissioner
999 Asylum Avenue
Hartford, CT 06105
Telephone (860) 566-2024 Facsimile (860) 566-3406

Attorney General's Office
Donald R. Green, Esq.
Assistant Attorney General
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120

_____
Monique S. Foley, Esq.

Unpublished Opinion

Elizabeth A. Wells
v.
State of Connecticut
Opinion No.: 88053

No. CV-04-0830623-S

Superior Court of Connecticut

Judicial District of Hartford at Hartford

March 14, 2005

MEMORANDUM OF DECISION

SATTER, JUDGE TRIAL REFEREE.

Plaintiff, Elizabeth A. Wells, sues the defendant, State of Connecticut, in negligence arising from the plaintiff slipping on goose droppings on the University of Connecticut, West Hartford campus. The claims commissioner has granted her permission to sue the State. The defendant State denies the allegations of negligence and interposes, in essence, the special defense of plaintiff's own contributory negligence.

The facts are as follows: On October 17, 2001, at about 8:30 a.m., the plaintiff, a 62-year-old woman, parked her car in the Trout Brook area parking lot and proceeded on the sidewalks of the West Hartford University of Connecticut campus to the building on Asylum Street that formerly housed the UConn Law School to attend a real estate class. She was accompanied by her companion Grace Jacobs. The plaintiff noticed the sidewalk was well covered with goose droppings and she and her companion tried to pick their way through them. She slipped on these droppings at a point approximately midway between the School of Social Work building and the building housing the former law school. A pond nearby attracted geese which grazed on the campus lawns and regularly walked across the sidewalk, leaving their droppings.

The grounds and maintenance people of the University of Connecticut knew of this condition. They had a program to remediate the situation by brushing the sidewalks regularly on Monday and Wednesday and at other times as often as was needed. The State did not keep records of the sweeping, and on October 17, 2001, which was a Wednesday, defendant's maintenance people could not say the walks were swept.

Plaintiff's expert testified that goose droppings on sidewalks create a hazard to pedestrians. The Court believes that testimony and so finds.

The plaintiff, as a result of the fall, suffered a simple and compound fracture of bones in her left wrist. She underwent an operation resulting in a metal rod being inserted in her wrist. Her left arm was placed in a cast for six weeks. From the date of the accident until early January 2002 she was restricted in doing her housework, lifting heavy objects and even cutting her food. She has a light scar on her left

wrist. She incurred medical bills as follows: hospitals bills from St. Francis Hospital in the amount of $3,646.19; Dr. Gabow, $ 2,999.00; and Health South (physical therapy), $4,130.00. for a total of $10,775.19. She claims to have lost wages of $18,677.00 from her work as a real estate agent. Her orthopedic doctor gave her a 5% permanent partial disability of her wrist. She has a life expectancy of 19.1 years.

To establish negligence in a case of this nature the plaintiff must prove a duty, breach of that duty, causation, and damages. R. K. Constructors, Inc. v. Fusco Corp., 231 Conn. 381, 384 (1994). The duty defendant owes to the plaintiff as a business invitee on the campus is "to reasonably inspect and maintain the premises to keep the premises reasonably safe." Morin v. Bell Court Condominium Assoc., Inc., 223 Conn. 323, 327 (1992).

The Court finds that the goose droppings on the sidewalk were a hazard to pedestrians. The defendant knew that 40 to 60 geese frequent the campus in the area near the pond and cause the droppings on the sidewalk where plaintiff fell. Plaintiff slipped on those droppings, and the Court finds that the droppings were a substantial factor in causing her to fall.

The most difficult question is whether or not the defendant breached the duty owed to the plaintiff to exercise reasonable care under all the circumstances. The defendant knew that the condition giving rise to the fall existed for some time. The defendant had a program to sweep the sidewalk regularly on Mondays and Wednesdays at 7:30 a.m. and at other times as needed. No records were kept of the sweepings and no member of the defendant's grounds crew could testify that the sidewalks were swept that morning of October 17, 2001 prior to 8:40 a.m.

There was evidence in the case to the effect that remedial measures can be taken to solve a geese problem. They include puffing a low fence along the sidewalk; frightening the geese with loud noises; frightening the geese with visual methods such as helium balloons or scarecrows; and chasing the geese with free ranging dogs. The defendant's expert testified that none of these were feasible on the West Hartford campus, although, none of them had been tried.

The court's research reveals three cases in which plaintiff fell on animal droppings and in all of them plaintiff did not prevail: Gallagher v. North Hempstead, 535 N.Y.Supp.2d 10 (2d Dept. 1988) (plaintiff playing softball on a public field slipped and fell due to wet conditions and geese droppings; summary judgment for town granted despite the fact that it was a negligence action because there was no duty breached when the plaintiff assumed the risk of playing on a wet field); Carroll v. New Jersey Transit Authority, 841 A.2d 465 (N.J., App. Div., 2004) (plaintiff slipped and fell on dog feces while going down the steps into the subway; because plaintiff could not show that the defendant had actual or constructive notice of the dangerous condition, summary judgment in favor of the defendant was affirmed); Cook v. Burke County, 157 S.E.2d 611 (N.C., 1967) (plaintiff slipped and fell on a misty sidewalk also covered in pigeon droppings; there was no proof that the defendant knew or should have known that the presence of the mixture of substances on the sidewalk would cause the plaintiff to fall and the judgment of nonsuit was properly entered).

In the instant case the court comes to a different conclusion. The court finds that the sidewalks were well covered with goose droppings at 8:40 on October 17, 2001, as testified to by both the plaintiff and her companion, Grace Jacobs. The Court further finds that the extent of the droppings at that time leads the Court to infer that the defendant did not sweep the sidewalk that Wednesday morning as it usually does. As a consequence this Court concludes that the defendant failed to exercise reasonable care to keep the sidewalks reasonably safe on the morning that the plaintiff fell.

The Court also finds, however, based upon the evidence, that the defendant was guilty of contributory negligence. She was aware of the droppings and failed to keep a proper look out and to exercise reasonable caution to avoid her fall. As a consequence, the Court finds her 33% contributorily negligent.

As for damages, the court finds that plaintiff incurred hospital and medical expenses totaling $10,720.19 that were proximately caused by the defendant's negligence. The evidence relating to plaintiff's loss of earnings, is not as clear. The plaintiff testified it took approximately 6 months to realize commissions on sales that she had initiated. As a consequence, her income in the year 2002 would measure her loss of earnings due to the approximately 2-1/2 months she was unable to work from October 2001 until January 2002. Her business income in 2002, determined from her income tax return for that year, was $27,785. One-fourth of that is $6,946. The Court finds that amount represents her lost wages.

Her injury was a serious one; she suffered considerable pain, had a metal rod inserted in her wrist and was unable to carry on life's functions for approximately 2-1/2 months. As indicated she has a life expectancy of 19.1 years.

Based on the foregoing evidence, the Court awards her damages as follows:

Economic Damages		
Medical Bills	$10,720.19	
Lost Wages	6,946.00	
	$17,666.19	
Noneconomic Damages	$75,000.00	
	$92,666.19	
Less One-third for		
Contributory negligence	($30,888.73)	
Total Damages Due the		
Plaintiff	$61,777.46	

This judgment may enter in favor of the plaintiff for $61,777.46, plus, as additional costs an allowance for the testimony of her expert of $462.50.

Robert Satter

CLAIM NO. 21041

EILEEN LINDHOLM *Claimant*	:	STATE OF CONNECTICUT
V.	:	CLAIMS COMMISSIONER OFFICE
STATE OF CONNECTICUT, UNIVERSITY OF CONNECTICUT HEALTH CENTER, AND JOHN DEMPSEY HOSPITAL *Respondent*	:	999 ASYLUM AVENUE HARTFORD, CT 06105 JANUARY 9, 2009

MOTION FOR ARTICULATION

The claimant, Eileen Lindholm, hereby respectfully moves the Claims Commissioner, James R. Smith, to articulate the basis for its decision dated December 29, 2008 denying claimant's request for permission to sue the State of Connecticut based on injuries sustained at the Respondent hospital on January 2, 2007.

I. BRIEF HISTORY OF THE CASE

This case stems from a claim for injuries arising out of an incident occurring on January 3, 2007, at approximately 10:00 a.m., when claimant, Eileen Lindholm, while leaving the defendant hospital, John Dempsey Hospital and University of Connecticut Health Center, was walking across the driveway of the front entrance to said hospital, when suddenly and without warning her foot became caught on a pothole in said driveway causing the claimant to

fall and sustain injuries, losses and damages. The parties attended a liability hearing on or about December 1, 2008 wherein testimony was presented regarding this claim. After hearing on the issue the Claims Commissioner issued a written denial of claimant's claim.

II. FACTUAL GROUNDS RELIED UPON

The present state of the decision does not include pertinent legal findings relative to claimant's claim. The decision narrowly focuses on actions and/or inactions of claimant, while failing to provide findings on several elements raised in claimant's claim against the state. More specifically, the decision does not state which elements of claimant's claim of negligence are established based on the evidence presented. There are no findings as to whether the respondents had a duty to Plaintiff and whether that duty was breached. In addition, there is no legal basis provided for the conclusion reached, namely that the claimant's actions and/or inactions bar recovery in this case. This motion is being filed to protect the issue in the event the claimant files a request for review of the decision.

III. SPECIFIC QUESTIONS PRESENTED FOR ARTICULATION

(1) Was the roadway defective as claimed?

(2) Whether the respondents actually knew of the particular defect, or that in the exercise of its supervision of the roadway, should have known of the defect?

(3) Whether the respondent having actual or constructive knowledge of this defect,

failed to remedy it having had reasonable time, under all the circumstances, to do so?

(4) What is the legal basis for finding that the respondents did not cause claimant's injuries?

(5) Was the claimant a proximate cause of the injuries sustained on January 2, 2007?

(6) If the response to the previous question is in the affirmative, what is the basis for said finding?

(7) Was the claimant's decision to utilize the roadway in lieu of the sidewalk a proximate cause of her injuries?

WHEREFORE, the claimant respectfully moves that the claims commissioner articulate the basis for its decision in accordance with the foregoing.

THE CLAIMANT
EILEEN LINDHOLM

BY _____

Monique S. Foley, Esq.
Her Attorney
Law Offices of Kevin C. Ferry, LLC
77 Lexington Street
New Britain, CT 06052
(860) 247-0030
Juris No: 404591

CERTIFICATION

This shall certify that a copy of the foregoing has been delivered by fax and first class mail postage prepaid this 12th day of January, 2009 to:

JAMES R. SMITH COMMISSIONER
STATE OF CONNECTICUT
Office of Claims Commissioner
999 Asylum Avenue
Hartford, CT 06105
Telephone (860) 566-2024 Facsimile (860) 566-3406

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